Supreme Court, U.S.
FILED
JAN 21 1999
CLERK

(2)

No. 98-1783

In The

Supreme Court of the United States

SANDRA FREEMAN and EUGENE FREEMAN,

Petitioners,

v.

DR. SIMON LENARD, MD and
BETH ISRAEL HOSPITAL CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Judicial Court Of Massachusetts

BRIEF OPPOSING A MOTION TO DISMISS

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QUESTIONS PRESENTED

1. WHETHER THE MASSACHUSETTS STATE LAWS VIOLATE THE CONSTITUTIONALLY ESTABLISHED AND FEDERALLY PROTECTED INTRAFAMILIAL FUNDAMENTAL PRIVACY RIGHTS AND THEREFORE ARE REPUGNANT TO THE UNITED STATES CONSTITUTION.

2. WHETHER DISREGARD BY THE STATE COURT'S PETITIONER'S RIGHTS PRECLUDES THE DETERMINATION OF THE DAMAGES ACTIONABLE UNDER CHAPTER 28 U.S.C.A.1343 (3).

3. RESPONDENTS APPLIED THE WRONG STANDARDS THAT GUIDE THE COURT'S EXERCISE OF DISCRETION TO GRANT A PETITION FOR CERTIORARI.

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I. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

28 U.S.C. Section 1257 states in pertinent part:

> (a) Final judgment or decree rendered by the highest Court in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the grounds of it being repugnant to the Constitution, treaties, or laws of the United States. . . .

This controversy involves the validity of state statutes on the ground of its being repugnant to the Constitution. The petitioners Sandra and Eugene Freeman assert that Massachusetts General Code Annotated Chapter 176 Section 7, Chapter 176 B section 14, Chapter 176 B Section 20(f) are repugnant to the Constitution as it was applied in this controversy, specifically as to inflict the irreparable damages to the violated of the First and Fourteenth Amendment rights, and equal protection clause as to the fundamental, concrete, individual, intrafamilial rights of privacy, constitutionally established and federally protected. [C-2, 3, 4, 5; App. 3, 4, 6]

The issue was raised by the petitioners in Federal Court as soon as they discovered the violent disregard of the constitutional rights. The petitioners lost in all instances. The petitioners did not litigate any issue of discovered deprivations in the State of Massachusetts Suffolk Court prior to federal litigation. They commenced the Section 1983 and 1985(3) pursuant to 28 U.S.C.A. 1343(3) litigation in the United States District Court. They

voluntarily stipulate the case by Motion to Dismiss on about March 1993. The claim's dismissal and all subsequent mistrial in the Federal Court of the First Circuit are without the effect due to judicial misconduct under 28 U.S.C.A. Section 455(a). The Writ of Certiorari was dismissed. On May 23, 1997 the petitioners filed the Motion on Rule 60(b)(4), alleging by the Affidavits the facts referred specifically to the federal question cause of action in the State's Court. The Motion on Rule 60 despite on Motion demanding jury trial was dismissed, including stricken mandatory Motion on Rule 59.

In a request by the State Court Petition for Rehearing to the appellate court the petitioners raised the issue of the irreparable damages under the set of Massachusetts laws. The Petition was denied. [*App. 17*]

Petitioners then brought a Petition for Review in the Massachusetts Supreme Judicial Court. Petitioners raised the issue of constitutional deprivations under the State's laws authorization in violation of the federal laws. The review was denied by the Supreme Judicial Court. [*App. 18*]

In order to invoke and to establish the jurisdiction of the Supreme Court the petitioners argue that the jurisdiction does not depend on whether or not the state court addressed the federal question. It is enough that the federal claim was made and not accepted. (*Lynk v. La Porte Superior Court No. 2*, 789 F.2d 554 (7th Cir. 1986).) When the Massachusetts Supreme Court denies a Petition for Review, it is to be assumed that the court has been given fair opportunity to review the merits of the petitioners' claim, for purposes of exhaustion of state court

remedies. (*Roman v. Estelle*, 917 F.2d 1505 (9th. Cir. 1990).) The issue has been raised, preserved, and passed upon by Massachusetts Supreme Judicial Court.

The respondent's claim that the petition must be denied is absolutely erroneous. This court has jurisdiction under 28 U.S.C. Section 1257 because petitioners exhausted the state court remedies on the issues raised by this petition.

II. WHETHER DISREGARD BY THE STATE COURT'S THE PETITIONER'S RIGHTS PRECLUDES THE DETERMINATION OF THE DAMAGES ACTIONABLE UNDER CHAPTER 28 U.S.C.A. 1343(3).

In order to prevent denial without the opposition, the petitioners explicitly object and oppose any and all Respondent's affirmative defenses and, specifically, the Motion to Deny.

The Respondent ignores the set forth rules of the Federal Civil Procedure, which require the pro se litigant to sign up the paper only on behalf of her/himself in order to be legally bound to the effect of Dismissal, where the party presents itself.

Res judicata and collateral estoppel without its preclusive effect to litigate "Issue" and "Claim" when the Federal District Court for District of Massachusetts dismissed original pro se complaint for failure to state a claim upon which relief could be granted. Our federal question claim was dismissed upon internally inconsistent defenses on Rule 12(b)(1) and (b)(6) in the Federal Court with subsequent judicial abuse, denied us full and fair opportunity to be heard. This Court should agree that

facts underlying two pleaded actions were substantially different: the Federal Court action involves a single discrete issue of the sustained constitutional damages under the set of interim regulations and state policies. In our individual controversy the interlocutory order denying Freeman's party litigation was neither a final judgment nor an essential precursor to what was in fact the final judgment. Because the Respondents prevailed on Rule 12(b)(1) it was beyond the power of the Court to decide whether the complaint was sufficient to state a cause of action under Rule 12(b)(6).

Where the current unresolved controversy in the State Court involves a course of conduct, based upon the documented evidence and unrebutted proof of intent to inflict the damages, pleaded by the Affidavits, supported by the evidence establishing the state of mind in regard of the traditional State's monopoly within the State sovereign delegated power to the private actors to perform traditional, essential health care service under Parens Patriae.

The Respondents' mutual derivative interests, relationship and connection as "privity" claimed by petitioners in the Federal Court does not include the "tandem" action pleaded with particularity in the current State litigation, enforceable under 28 U.S.C.A. 1343(3). Because the State's Court claims are absolutely clearly separate, independent and distinct from the Federal interim regulations claims, and Congress without the power to preclude the litigation the personal rights of privacy in the State's Court, they should not be considered as an "Identical claims". [C-6; App.-1, 2, 4, 5, 6, 12]

Specifically, the doctrine of collateral estoppel may not be invoked where the irreparable damages to our family was induced by the fraudulent and conspiratorial conduct of the Respondents' party, that we still suffer daily, and by the Respondents' fraud and misrepresentations in both Courts.

The petitioners had the opportunity to litigate federal cause of action accrued only since they discovered violent deprivations and had the reason to know that they sustained constitutional damages. *Gleason v. United States*, 458 F.2d 171 (2d Cir. 1972).

III. RESPONDENTS APPLIED THE WRONG STANDARDS THAT GUIDE THE COURT'S EXERCISE OF DISCRETION TO GRANT A PETITION FOR CERTIORARI.

Supreme Court Rule 10 describes the standards that guide the Court's exercise of discretion to grant a petition for certiorari. Respondents' Motion to Dismiss urges the Court to deny Sandra and Eugene Freeman's petition for certiorari, because, in Respondents' judgment, the petitioners failed to satisfy Rule 14 standards; because petitioners filed "Identical claims"; and because the district court ignored the mandatory procedural rules governing the Voluntary Dismissal to be signed by all members of the pro se party. However, whether a Massachusetts Supreme Judicial Court correctly decided a question is not a Rule 10 standard that guides the Court's exercise of discretion. Rather, with respect to the Court's decision to grant or deny petitioners Sandra and Eugene Freeman's petition, the guiding standards are whether the questions

the Massachusetts Supreme Judicial Court expressly disregarded without any decision the guarantee of equal protection of the law in a controversy involving purposeful ethnic discrimination are of paramount constitutionally established importance that they should be decided by this Court, and whether the disregard of constitutionally established and federally protected rights to be free from the pain and suffering under the State law's authorization conflicts with the Constitution and with relevant decisions of this Court. *See* SUPREME COURT RULE 10(c).

Sandra and Eugene Freeman petition for certiorari presents questions of the fundamental individual privacy rights under the First and Fourteenth Amendments, all questions of constitutional importance, which satisfy the Rule 10.

CONCLUSION

For the foregoing reasons and those in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Massachusetts General Law Annotated the Chapter 176 B Section 7,

"No restrictions shall be placed by any such corporation upon its participating physicians, chiropractors, or nurse midwives as to methods of diagnosis or treatment." A1

Massachusetts General Law Annotated the Chapter 176 B Section 14, Medical Service Corporation.

Liability of corporation; exemption from insurance laws, tax exemption "Section 14.

Every medical service corporation is hereby declared to be charitable corporation. (No such corporation shall be liable for injuries resulted from negligence or malpractice on the part of any participating physician, participating chiropractor any other part of participating provider of health service under the laws of the commonwealth to which the subscriber or covered dependent maybe entitled under the provision of any workmen's compensation. Very such corporation shall be exempt from all provisions of the insurance laws of the commonwealth, except as otherwise provided in this chapter. The property of every such corporation shall, except as hereinafter provided be excempt from all state and local taxes." A2

Massachusetts General Law Annotated the Chapter 176 B Section 20, MEDICAL SERVICE CORPORATIONS

(f) that nothing contained herein shall prohibit a medical service corporation from disclosing patient information to an account which is self insured in whole or in part, and administered by such corporation for research to be conducted by the account; provided, however, that no patient shall be subject of such research without having first been notified by the account in writing of the scope and purpose of the research. Such written notice shall clearly state that the patient will not be a participant in any such research and will not be penalized in any way if the patient elects in writing to be excluded. Any research conducted by an account under this clause maintain the confidentiality of all identifiable patient information A3